



CNR: KAHC010658842024

NC: 2026:KHC:41832
WP No. 33766 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO. 33766 OF 2024 (GM-CPC)

BETWEEN:

1. SUVARNA
W/O LATE K BASAVASHETTY @ BASHETTY,
AGED ABOUT 81 YEARS,
2. SURESHA
S/O LATE K BASAVASHETTY @ BASHETTY,
AGED ABOUT 59 YEARS,

PETITIONERS 1 AND 2 ARE
R/AT KOTAVALU VILLAGE,
RAMANATHAPURA HOBLI,
ARAKALAGUD TALUK,
HASSAN DISTRICT-573133

3. KUSUMA
W/O SHIVALINGASWAMY,
AGED ABOUT 63 YEARS,
NO.74, 8E CROSS,
ATHIGUPPE,
BENGALURU-560040
4. SUKANYA
W/O LOKESHA,
AGED ABOUT 57 YEARS,
SRI SIDDESHWARA STORE,
MYSORE ROAD,
K R NAGARA TOWN,
K R NAGARA TALUK,

Digitally
signed by
BHARATHI S
Location:
HIGH COURT
OF
KARNATAKA



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MYSURU DISTRICT-571602

5. MANJULA
W/O SATHISHKUMAR,
AGED ABOUT 53 YEARS,
HOSAPETE ROAD,
THIPATURU TOWN,
THIPATURU TALUK,
TUMAKURU DISTRICT-572201
6. SHANTHALA
W/O SIDDESHA,
AGED ABOUT 46 YEARS,
GOVINDANAHALLI VILLAGE,
KIKKERI HOBLI,
K R PETE TALUK,
MANDYA DISTRICT-571423

...PETITIONERS

(BY SRI. GURUPRASAD HEGDE, ADVOCATE FOR
SRI. S V PRAKASH, ADVOCATE)

AND:

1. K CHANDRASHEKARA
S/O KAPINISHETTY,
AGED ABOUT 76 YEARS,
RAMANATHAPURA HOBLI,
ARAKALAGUD TALUK,
HASSAN DISTRICT-573133
2. ANANDA K C
S/O K CHANDRASHEKARA,
AGED ABOUT 53 YEARS,

RESPONDENTS 1 & 2 ARE
R/AT KOTAVALU VILLAGE,
RAMANATHAPURA HOBLI,
ARAKALAGUD TALUK,
HASSAN DISTRICT-573133



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3. MANJUNATHA K C
S/O K CHANDRASHEKARA,
AGED ABOUT 44 YEARS,
RAMANATHAPURA HOBLI,
ARAKALAGUD TALUK,
HASSAN DISTRICT-573133

...RESPONDENTS

(BY SRI. GIRISH B BALADARE, ADVOCATE FOR R1 TO R3)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 23.09.2024 PASSED BY THE COURT OF LEARNED CIVIL JUDGE AND JMFC, ARAKALAGUD ON I.A.NO.II IN O.S.NO.04/2023 PRODUCED AS ANNEXURE-E TO THE WRIT PETITION.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. POONACHA

ORAL ORDER

The present writ petition is filed seeking for the following reliefs:

"a) Issue a writ in the nature of certiorari and set aside the order dated 23/09/2024 passed by the court of learned Civil Judge and JMFC, Arakalagud on I.A.No.II in O.S.No.04/2023 produced as ANNEXURE-E to the writ petition;

b) Issue an appropriate writ or order or direction rejecting I.A.No.II filed by the plaintiffs in O.S.No.04/2023 on the file of learned Civil Judge



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*and JMFC, Arakalagud on I.A.NO.II in
O.S.No.04/2023;*

*c) Issue any other appropriate writ or order or
direction as this Hon'ble Court deems it appropriate
in the admitted facts and circumstances of the case
to secure the ends of justice;*

d) Award the cost of this proceeding."

2. The relevant facts in a nutshell leading to the present petition are that the respondents instituted OS No.4/2023 before the Civil Judge and JMFC, Arakalagud¹ for injunction. The petitioners herein are arrayed as defendants in the said suit. The suit schedule 'A' property in OS No.4/2023 is Sy.No.1/1A measuring 39 guntas in Kotavalu village, Ramanathapura Hobli, Arakalagud. It is the contention of the respondents/plaintiffs that the petitioners/defendants have encroached an extent of 5 guntas in the eastern side of the suit schedule 'A' property. The encroached portion is described as suit schedule 'B' property.

3. The petitioners have filed OS No.408/2022, which is pending before the trial Court. Respondent No.1 herein is arrayed as defendant No.1 in the said suit. Respondent Nos.2

¹ hereinafter referred to as 'the trial Court'



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and 3 herein, who are plaintiff Nos.2 and 3 in OS No.4/2023 are the children of respondent No.1. The suit schedule 'A' property in OS No.408/2022 is described as Sy.No.1/2 measuring 1 acre 30 guntas in Kotavalu village, Ramanathapura Hobli, Arakalagud. The petitioners allege that respondent No.1 has encroached an extent of 5 guntas on the western side of the suit schedule 'A' property. The encroached portion is described as schedule 'B' in the said suit.

4. Admittedly, the schedule 'A' properties in both the suits are abutting one another. The predecessors of the parties namely, Sri Basava Shetty and Sri Kapini Shetty were brothers.

5. In the present writ petition, the order dated 23.09.2024² passed on IA.No.2 in OS No.4/2023 by the trial Court is impugned. Vide the said order, the application filed by the respondents/plaintiffs to appoint a Court Commissioner has been allowed.

6. It is submitted by both the parties that in the suit filed by the petitioners i.e., OS No.408/2022 a Court

² hereinafter referred to as 'the impugned order'



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Commissioner has been appointed, who has visited the property and submitted the Commissioner Report.

7. In view of the aforementioned factual situation, it is expedient that both the suits [OS No.4/2023 and OS No.408/2022] be clubbed and a Commissioner be appointed to measure both the suit properties, which are abutting one another.

8. At this stage, it is submitted that in OS No.4/2023 the pleadings are not yet completed, whereas in OS No.408/2022 the evidence has already commenced. Notwithstanding the same, having regard to the fact that the properties are abutting one another and both the parties allege that the other party has encroached a portion of the suit property, to avoid conflicting judgments, it is expedient that the suits be clubbed and a common trial be conducted so as to adjudicate the dispute between the parties. It is also expedient that a Commissioner be appointed to measure both the properties and submit his report.

9. In view of the fact that the Commissioner report that has been submitted in OS No.408/2022 is with regard to



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only one of the properties, the same shall be disregarded since the Commissioner report with respect to both the properties is being ordered upon.

10. Hence, the following:

ORDER

- i. The writ petition is partly allowed;
- ii. The impugned order dated I.A.NO.II in O.S.No.04/2023 by the Civil Judge and JMFC, Arakalagud, stands modified as ordered herein;
- iii. OS.No.4/2023 being the later suit be clubbed along with OS No.408/2022, which is the earlier suit;
- iv. The Taluka Surveyor is appointed as the Court Commissioner to measure the suit schedule 'A' and 'B' properties in both the suits i.e., Sy.No.1/1A as well as Sy.No.1/2 and furnish his report to the trial Court;
- v. The Commissioner shall issue notice to both the parties and proceed further in accordance with law;
- vi. It shall be open to both the parties to file their memo of instructions to the Court Commissioner;



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- vii. Consequent to the submission of the Commissioner's report, the trial Court shall conduct the further proceedings in the suits, in accordance with law, as expeditiously as possible;
- viii. The contentions of both the parties on the merits of the matter are kept open.

**SD/-
(C.M. POONACHA)
JUDGE**

ND
List No.: 1 Sl No.: 9